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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,290	12/27/1999	MAQBOOL PATEL	15-IS-5298	8556

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EXAMINER

STEELMAN, MARY J

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/472,290

Applicant(s)

PATEL ET AL.

Examiner

Mary J. Steelman

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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In response to proposed Amendment submitted 22 November 2004:

Amendment to claim 11 will be entered. The rejection of claim 11 remains unchanged.

In response to Remarks submitted 22 November 2004:

Applicant has argued, in substance, the following:

(A) As noted on page 9, last paragraph, through page 10, 1st paragraph, "There is no error correction, error analysis, or software update functionally mentioned or even envisioned in Zur...Zur is wholly inappropriate..."

Examiner's Response:

Zur is not relied upon for error correction or analysis. Zur (col. 1, lines 6-8) "relates to systems and methods for **management** of X-ray imaging facilities **and services**, specifically digital X-ray imaging facilities...(col. 1, lines 44-45) services **including the steps of installing...**" (emphasis added)

(B) As noted on page 10, 2nd paragraph, "Allison neither mentions nor has any logical relationship to a medical environment or a picture archiving and communication system...Allison makes no mention of error detection or correction."

Examiner's Response:

Allison is not relied upon for error correction or analysis. There is motivation to install software (specifically picture archiving system) simultaneously on networked computers by combining the references of Zur and Allison, as Zur shows networked workstations running picture archiving software. A simultaneous install is a cost and time efficient method of managing networks (See response to (A) above.). Zur does mention that system costs are a consideration (col. 1, lines 33-34).

Allison provides for an automatic, **simultaneous installation of software on a plurality of clients**. (emphasis added) Allison noted (col. 1, lines 41-45) “the need exists for a method and apparatus for automatically installing...which does not require human involvement and which is capable of automatically installing...on large numbers of computers.”

Thus a simultaneous installation of software on a plurality of distributed computers was well known in the art at the time of the invention.

(C) As noted on page 11, 4th paragraph, “...the Allison patent only discloses a computer and software testing system.”

Examiner's Response:

Examiner disagrees. The Allison reference is relied upon for the feature of “simultaneous installation of software on a plurality of distributed systems.”

(D) As noted on page 12, 2nd paragraph, “Kobata neither mentions nor has any logical relationship to a medical environment or a picture archiving and communication system...”

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Examiner's Response:

Kobata is not relied upon for a picture archiving and communication system. Kobata is relied upon for disclosing remote software error detection and correction. The Kobata reference provides the features of software updates, log files and error detection / correction. Kobata collects client information. The server retrieves the data. The server provides corrective measures by downloading software to the remote client. Kobata: col. 4, lines 5-10, "expert system...can remotely identify problems...remotely identify solutions...", col. 4, lines 5-10, "expert system...can ...remotely fix problems...remotely install software..."

(E) As noted on page 13, paragraph 2, "Kobata's purpose is to monitor remotely the configuration ...and download software...to resolve compatibility problems. Because Kobata is focused on determining installation compatibility problems in personal computers, a person of ordinary skill in the art would not have looked to it in attempting to develop a remote installation and error correction system for a PACs."

Examiner's Response:

Examiner disagrees. Broadly, Kobata disclosed remote error detection / correction of software involving software updates. These limitations were known in the art at the time of Applicant's invention. A person of ordinary skill in the art would rely on this disclosure when developing a remote installation of software.

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(F) As noted on page 13, 3rd paragraph, “the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.”

Examiner’s Response:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(G) Applicant has provided a “theoretical combination” (page 15, last paragraph, page 17, 1st paragraph), of the systems resulting from a combination of the references provided by Examiner.

Examiner’s Response:

Examiner disagrees at to how Applicant characterizes the references. Features from each reference are properly combined to overcome the limitations of Applicant’s claims. A Picture Archiving and Communication System, a type of medical imaging software, is well known in the art. Simultaneous installation of software on remote computers is known in the art. Remote error detection / correction is known in the art. It would have been obvious to combine these features to produce Applicant’s claimed limitations.

Zur (col. 1, lines 6-8) “relates to systems and methods for **management** of X-ray imaging facilities **and services**, specifically digital X-ray imaging facilities...(col. 1, lines 44-45) services **including the steps of installing...**” (emphasis added)

There is motivation to install software (specifically picture archiving system) simultaneously on networked computers by combining the references of Zur and Allison, as Zur shows networked workstations running picture archiving software. A simultaneous install is a cost and time efficient method of managing networks. Zur does mention that system costs are a consideration (col. 1, lines 33-34).

Allison provides for an automatic, simultaneous installation of software on a plurality of clients. Allison noted (col. 1, lines 41-45) “the need exists for a method and apparatus for automatically installing...which does not require human involvement and which is capable of automatically installing...on large numbers of computers.”

Kobata disclosed (col. 1, lines 11-14), “This invention relates to the provision of data over the Internet...to provide appropriate software (software installation)...based on the user’s infrastructure data.” Kobata noted (col. 1, line 43) “installation problems” which occur most frequently...” The Kobata reference provides the features of extracting / analyzing data for error conditions, for the purpose of reducing installation problems.

Thus all references relate to installing distributed software. Management and services are provided to automatically install. Time and cost efficiency considerations and reduced installation problems are provided.

Examiner has relied on features disclosed in the references, which were known in the art, at the time of the invention, the combination of which would be obvious. PACs systems, a

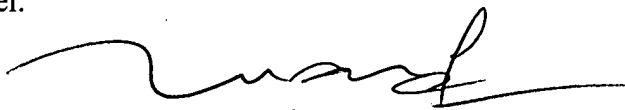
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specific type of medical imaging software used on distributed systems was well known at the time of the invention. Updating remote software, using a simultaneous installation technique was well known at the time of the invention. Error detection / correction techniques used on distributed systems, were well known at the time of the invention.

(H) As noted on page 18, 3rd and 4th paragraph through page 20, Applicant questions the extent of common knowledge and Official Notice taken. Specifically “update installation in response to an error condition being remotely identified” or “error condition detected” is well known in the art.

Examiner's Response:

Examiner did not take Official Notice in the Final Office Action. Examiner did repeat several times that a feature was well known in the art, and backed the statement up with a reference (Zur for managing PACs software, Allison for simultaneously updating remote software, Kobata for updating with considerations given to error detection & correction). Software updating and installation are classified under 717/168-178. Additionally, an entire art class (714) section is dedicated to error detection / correction. Without specific details regarding what type of error is detected, how it is detected, how it is corrected, Examiner feels justified in stating the error detection and correction is well known in the art. Broadly stating in the claim limitation that error detection / correction involves a medical imaging software application is not specific enough to be novel.


TUAN DAM
SUPERVISORY PATENT EXAMINER


My Stulman, Examiner